

**DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE**

19 CFR PARTS 4, 19, 122, 123, 127, 141 AND 142

RIN 1515-AC57

GENERAL ORDER WAREHOUSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations principally to create a new class of bonded warehouse exclusively for the receipt of general order merchandise, and to include procedures for authorizing and operating general order warehouses. This proposal is in response to a recent increase in the amount of unentered merchandise being moved into general order facilities. This increase has resulted from changes in the law, and it has prompted the importing community to request that Customs put in place uniform, national procedures for approving and operating warehouses receiving general order merchandise.

In addition, changes are proposed to the Customs Regulations to implement certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act. The amendments concern the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

DATES: Comments must be received on or before 60 days from July 12, 2000].

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Gerard Bradley, Office of Field Operations, 202-927-0765.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title VI of the North American Free Trade Agreement Implementation Act, 107 Stat. 2057 (Pub. L. 103-182; December 8, 1993), popularly known as the Customs Modernization Act (Mod Act), amended a number of Customs and navigation laws.

In particular, section 656 of the Mod Act amended 19 U.S.C. 1448(a) to provide, among other things, that the owner or master of any vessel or vehicle, or agent thereof, would be required to notify Customs of any merchandise or baggage unladen from the vessel or vehicle, for which entry was not made within the time prescribed by law or regulation; and if entry were not made within the prescribed time, the master or person in charge of the importing vessel or vehicle, or agent thereof, would be responsible for such unentered merchandise until it was removed from the carrier's control and placed in general order status in accordance with 19 U.S.C. 1490.

In concert with this, section 658 of the Mod Act amended 19 U.S.C. 1490 by

deleting the requirement that a Customs officer take unentered merchandise into Customs custody and send it to a bonded warehouse. Instead, carriers are now required to notify both Customs and a bonded warehouse of the unentered merchandise, and the bonded warehouse would then have to arrange for the transportation and storage of the merchandise at the risk and expense of the consignee.

These, and related, statutory amendments were implemented by a final rule document amending the Customs Regulations, that was published in the **Federal Register** (63 FR 51283) on September 25, 1998, as T.D. 98-74.

Based on the statutory amendments, and the Customs Regulations implementing them, imported merchandise could not remain at the wharf, pier or other place of unloading more than 15 calendar days after its landing; or, if transferred from the arriving carrier to any party under a Customs-authorized permit to transfer or in-bond entry, the merchandise could not remain in the custody of that party more than 15 calendar days after its receipt under a Customs-authorized permit to transfer or more than 15 calendar days after its arrival at the port of destination, as provided in ' ' 4.37, 122.50, 123.10, Customs Regulations (19 CFR 4.37, 122.50, 123.10). There is no provision in these regulations for any extension of this 15-day period.

Customs and the trade have consequently seen an increase in the amount of unentered merchandise moving into general order facilities, including merchandise, such as hazardous materials, requiring specialized storage facilities. Due to this increase in merchandise moving into temporary storage in general order status, the

trade community has sought the establishment of national, uniform criteria for the approval and operation of general order warehouses.

Accordingly, by this document, Customs is proposing that a new class of bonded warehouse, a Class 11 warehouse, be established exclusively to handle the receipt of general order merchandise as described in ' 127.1, Customs Regulations (19 CFR 127.1). It is further proposed that a Class 3, 4, or 5 bonded warehouse, as described in ' 19.1(a)(3), (4), or (5), Customs Regulations (19 CFR 19.1(a)(3), (4), or (5)), may likewise be used for the deposit of general order merchandise, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under ' 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. Section 19.1, Customs Regulations (19 CFR 19.1), would be amended as necessary to address these matters.

Class 1 warehouses, which are premises owned or leased by the Government for the deposit of unentered, seized or unclaimed merchandise, would, however, be retained as such, should the exigencies of the service as determined by the applicable port director require their occasional use.

As already indicated, the application criteria set forth in ' 19.2 would apply as

well to a warehouse where general order merchandise is to be sent. In addition, as a condition for approval of the application to establish a warehouse facility, at the discretion of the port director, minimum space requirements could be imposed for the storage of general order merchandise. The port director would need to post an announcement of these requirements by a written notice at the customhouse, and by any appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

Furthermore, ' 19.2(f) would be amended to provide, in the case of applications from a business entity to establish a bonded warehouse, that Customs may require the submission of fingerprints from all employees of the business entity, as opposed to only those of all officers and managing officials. This requirement would apply to applications generally to establish a Customs bonded warehouse, including a general order warehouse. In this regard, there is a reasonably perceived need under the circumstances for a more thorough, comprehensive scrutiny of applicants, consistent with Customs movement toward a post-audit environment and the spirit of Ashared responsibility® embodied in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act.

Additionally, a general order warehouse would have to satisfy the inventory and recordkeeping requirements in ' 19.12, Customs Regulations (19 CFR 19.12). However, the warehouse would have to do so through an automated inventory control

and recordkeeping system. Existing Class 3, 4 and 5 warehouses that handle general order merchandise would be allowed a reasonable Aphase-in@ period (specifically, 2 years) after which their recordkeeping systems, at least insofar as they cover general order merchandise, must likewise be automated. Section 19.12 would be revised accordingly.

To this end, Customs has recently seen an increase in the quantity of unentered, unclaimed merchandise being sent into general order, as discussed above. Requiring an automated inventory system for such merchandise would enhance effectiveness in managing and monitoring the greater number of general order transactions, and thus augment the ability to track and safeguard this merchandise, which would benefit both the importing community as well as the Government. Specifically, an automated system would assist importers of unentered cargo by enabling its more rapid location and the faster resolution of any problems associated with the entry and clearance of the cargo. Also, as noted, it would help protect the potential interest of the Government in the property, given that, generally speaking, if unentered property remains unclaimed for 6 months from the date of its importation, the title to such property may vest in the United States, and the property may be retained for official Government use, in accordance with 19 U.S.C. 1491(b) (see infra).

As is currently the case, the proprietor of a general order warehouse must arrange for the transportation of the merchandise to, and its storage at, the warehouse facility. It is observed that the warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as

designated by the port director or an electronic equivalent as authorized by Customs, that covers the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the carrier (or from any other party to whom custody of the merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry).

Sections 4.37, 19.9, 122.50 and 123.10, Customs Regulations (19 CFR 4.37, 19.9, 122.50 and 123.10), would be similarly amended in conformance with this latter, existing requirement. Also, for editorial purposes, in ' 19.9, the term Abonded carrier® would be substituted in place of Acartman or lighterman®.

In those cases where the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party would be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

On the other hand, if Customs finds that the proprietor cannot accept the goods because they are required to be exported or destroyed, or for other good cause, the goods would remain in the custody of the arriving carrier or in the custody of any party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry. In the event that merchandise cannot be accepted into a general order warehouse, and its exportation or destruction is required, as is the case with certain of the special categories of merchandise enumerated in ' 127.28,

Customs Regulations (19 CFR 127.28), the carrier or other party would be responsible under bond for exporting or destroying the goods, as necessary.

To implement the foregoing requirements, ' ' 4.37, 122.50 and 123.10 would be further amended accordingly. In addition, ' 127.13, Customs Regulations (19 CFR 127.13), would be amended consistent with ' ' 4.37, 122.50 and 123.10.

Furthermore, where the warehouse proprietor has taken merchandise into his custody, the proprietor would assume the responsibility and expense for the destruction of the merchandise, in the event that such destruction is found to be warranted under the circumstances (i.e., where the port director concludes that the merchandise has no commercial value or cannot be disposed of at public auction (unsalable)). The port director would authorize such destruction on a CF 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs. However, before destroying the merchandise, the warehouse proprietor would first have to make a reasonable effort to identify and inform the importer (owner) or consignee of the merchandise regarding its intended destruction. Section 127.14, Customs Regulations (19 CFR 127.14), would be revised to include these additional requirements.

Also, the general authority citation for part 127, Customs Regulations (19 CFR part 127), appearing after its table of contents, would be revised, and specific authority citations would be added for certain regulatory sections in part 127 whose authority is not already included in the general authority citation for the part. Currently, the specific statutory authority citations for numerous regulatory sections in part 127 are

set forth in parentheses immediately following the text of the sections. To eliminate unnecessary repetition, these parenthetical citations of authority appearing after the individual sections would be deleted.

Mod Act Changes; Title to Unclaimed Merchandise Vesting in Government

In addition, ' 127.14(a) would be revised and a new subpart E would be added to part 127 essentially to conform with and implement a number of amendments made to 19 U.S.C. 1491 under section 659 of the Mod Act. Section 1491 previously provided that unclaimed and abandoned merchandise would be sold at public auction.

However, 19 U.S.C. 1491, as amended by section 659 of the Mod Act, now provides that, as an alternative to selling unclaimed and abandoned merchandise at public auction, the title to the merchandise may instead vest in the United States following notice to all known interested parties, unless the merchandise is timely entered or withdrawn for consumption and all duties, taxes, fees, charges and other expenses accruing on the merchandise are paid. As amended, 19 U.S.C. 1491 also provides that in the event that title to such merchandise does vest in the Government, Customs may retain the property for its own official use, transfer the property to any other Federal, state or local agency, destroy the property, or otherwise dispose of it.

Moreover, where any party who lost title to, or a substantial interest in, the merchandise, by virtue of title having vested in the Government, can establish such title or interest, section 1491, as amended, provides that the party, upon filing a timely and

proper petition, may be paid the amount that it is believed the party would have received had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under 19 U.S.C. 1493.

In this latter regard, 19 U.S.C. 1493 provides that any surplus of proceeds from the sale of unclaimed and abandoned merchandise, that remains after the payment of certain enumerated charges, expenses, duties, taxes and fees, will be deposited in the Treasury, unless a proper claim for the surplus is filed with Customs.

Time Limit Within Which To Make Entry; Conforming Changes

In conformance with the changes already made under T.D. 98-74 to ' ' 4.37, 122.50, and 123.10, Customs Regulations, as discussed above, ' ' 141.5 and 142.2, Customs Regulations (19 CFR 141.5, 142.2), would likewise be changed to require that the entry of merchandise be made within 15 calendar days (as opposed to 5 working days) after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Also, the reference to entry having to be made by the consignee would be removed from these sections, inasmuch as the entry law (see 19 U.S.C. 1484(a)) no longer requires this.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), ' 1.4 of the Treasury Department

Regulations (31 CFR 1.4), and ' 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The proposed amendments primarily dealing with general order warehouses are intended to expedite the handling and disposition of general order merchandise, and to further facilitate consistent and uniform treatment in the administration of general order warehouses. Also, the proposed amendments dealing with the Mod Act are intended to conform with, implement and enforce the provisions of the statutory law and ensure the protection of the revenue. As such, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Nor do they meet the criteria for a significant regulatory action[®] as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collections of information in this notice of proposed rulemaking have in part already been reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515-0121 (Information to be supplied by owner or lessee in support of application to establish a bonded warehouse facility); and 1515-0220 (Notification

regarding imported merchandise or baggage for which entry has not been made). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The remaining collection of information in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This collection of information is contained in ' ' 4.37(c), 19.9(a), 122.50(c), and 123.10(c). This information is necessary to expedite the handling and disposition of general order merchandise; ensure that merchandise and baggage imported into the United States has been properly accounted for in accordance with the requirements of the statutory law; and facilitate consistent and uniform treatment in the administration of general order warehouses. The likely respondents and/or recordkeepers are business organizations, including importers and carriers.

Estimated total annual reporting and/or recordkeeping burden: 6600 hours.

Estimated average annual burden per respondent/recordkeeper: 33 hours.

Estimated number of respondents and/or recordkeepers: 200.

Estimated annual frequency of responses: 20,000.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S.

Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

20229. Comments should be submitted within the same time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be appropriately revised upon adoption of the proposal as a final rule.

LIST OF SUBJECTS

19 CFR PART 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Imports, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR PART 19

Bonds, Customs duties and inspection, Freight, Imports, Licensing, Reporting and recordkeeping requirements, Warehouses.

19 CFR PART 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR PART 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR PART 127

Customs duties and inspection, Exports, Freight, Reporting and recordkeeping requirements.

19 CFR PART 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

19 CFR PART 142

Administrative practice and procedure, Common carriers (Carrier initiative program), Customs duties and inspection, Entry of merchandise (Line release), Reporting and recordkeeping requirements.

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend parts 4, 19, 122, 123, 127, 141, and 142, Customs Regulations (19 CFR parts 4, 19, 122, 123, 127, 141 and 142), as set forth below.

PART 4 - VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 and the relevant specific authority citation would continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

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2. It is proposed to amend ' 4.37 by adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e), (f), and (g), respectively, as paragraphs (e), (f), (g), and (h), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

' 4.37 General order.

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the

proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see ' 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see ' 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see ' ' 113.63(c)(3) and 113.64(b) of this chapter).

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**PART 19 - CUSTOMS WAREHOUSES, CONTAINER STATIONS,
AND CONTROL OF MERCHANDISE THEREIN**

1. The general and relevant specific authority citations for part 19 would continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

* * * * *

2. It is proposed to amend ' 19.1 by adding a heading to paragraph (a), by revising paragraph (a)(1), by adding a new paragraph (a)(10), by adding a heading to paragraph (b), and by adding a new paragraph (c), to read as follows:

' 19.1 Classes of customs warehouses.

(a) Classifications. * * *

(1) Class 1. Premises owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises will be held under Ageneral order.@

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(10) Class 11. Bonded warehouses, known as Ageneral order warehouses®, established for the storage and disposition exclusively of general order merchandise as described in ' 127.1 of this chapter.

(b) Manipulation. * * *

(c) General order. General order merchandise as described in ' 127.1 of this chapter will be stored and disposed of in a Class 11 warehouse. However, general order merchandise may also be sent to a warehouse of Class 3, 4, or 5, but only if there is no Class 11 warehouse otherwise available to receive the merchandise, and provided the Class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a Class 11 warehouse, following an application under ' 19.2, Customs Regulations (19 CFR 19.2). So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (Class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

3. It is proposed to amend ' 19.2 by adding a new paragraph (d), and by revising the second sentence of paragraph (f), to read as follows:

' 19.2 Applications to bond.

* * * * *

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet

minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

* * * * *

(f) * * * The port director may require an individual applicant to submit fingerprints on Standard Form 87 at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on Standard Form 87, of all employees of the business entity.

4. It is proposed to amend ' 19.9 by revising paragraph (a) to read as follows:

' 19.9 General order, abandoned, and seized merchandise.

(a) Acceptance of merchandise. The general order warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor-s receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the

quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, will be reported to the port director within two working days of the joint determination.

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5. It is proposed to amend ' 19.12 by revising the introductory text in paragraph (a) to read as follows:

' 19.12 Inventory control and recordkeeping system.

(a) Systems capability. The proprietor of a Class 11 general order warehouse as described in ' 19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing Class 3, 4, or 5 warehouses as described in ' 19.1 certified before [the date this rule becomes final] to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from the date this rule becomes final. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

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PART 122 - AIR COMMERCE REGULATIONS

1. The authority citation for part 122 would continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. It is proposed to amend ' 122.50 by revising the heading, adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

' 122.50 General order merchandise.

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor-s receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see ' 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved

bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see ' 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see ' ' 113.63(c)(3) and 113.64(b) of this chapter).

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PART 123 - CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. It is proposed to amend ' 123.10 by revising the heading, adding a sentence after the third sentence in paragraph (c), by redesignating paragraphs (d), (e) and (f), respectively, as paragraphs (e), (f) and (g), and adding a new paragraph (d), and by adding two sentences at the end of paragraph (e) as thus redesignated, to read as follows:

' **123.10 General order merchandise.**

* * * * *

(c) * * * The warehouse proprietor is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or from any party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see ' 19.9 of this chapter). * * *

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to relinquish custody of the merchandise to a Customs-approved bonded warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) * * * If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see ' 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or

other party will be responsible under bond for exporting or destroying the goods, as necessary (see ' ' 113.63(c)(3) and 113.64(b) of this chapter).

* * * * *

PART 127 - GENERAL ORDER, UNCLAIMED AND ABANDONED MERCHANDISE

1. The general authority citation for part 127 would be revised, and specific sectional authority citations would be added, to read as follows:

AUTHORITY: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

2. It is proposed to amend part 127 by removing the statutory authority citations that appear in parentheses immediately below the texts of ' ' 127.1, 127.2, 127.11-127.14, 127.21, 127.23-127.29, and 127.31-127.37.

3. It is proposed to amend ' ' 127.13 by revising paragraph (a) to read as follows:

' ' 127.13 Storage of unclaimed and abandoned merchandise.

(a) Place of storage. A Class 11 bonded warehouse or warehouse of Class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned

merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in ' ' 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

* * * * *

4. It is proposed to amend ' 127.14 by revising paragraph (a) to read as follows:

' 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) Merchandise subject to sale or other disposition. (1) General. If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in ' 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or

withdrawn for consumption in accordance with paragraph (b) of this section.

(2) Destruction of merchandise. (i) Proprietor responsibility. If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (see ' 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (see ' 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) Notice of destruction. Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (see ' 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

* * * * *

5. It is proposed to amend part 127 by adding a new subpart E to read as follows:

Subpart E - Title to Unclaimed and Abandoned Merchandise

Vesting in Government

- ' 127.41 Government title to unclaimed and abandoned merchandise.
- ' 127.42 Disposition of merchandise owned by Government.
- ' 127.43 Petition of party for surplus proceeds had merchandise been sold.

Subpart E - Title to Unclaimed and Abandoned Merchandise

Vesting in Government

- ' **127.41 Government title to unclaimed and abandoned merchandise.**

(a) Vesting of title in Government. At the end of the 6-month period noted in

' 127.11, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Commissioner of Customs, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) Notice to known interested parties. Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

- (1) Importer, if known;
- (2) Consignee, if name and address can be ascertained;
- (3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and
- (4) Any other known interested parties.

(c) Appraisalment of merchandise. Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

' 127.42 Disposition of merchandise owned by Government.

(a) Disposition. If title to any unclaimed and abandoned merchandise vests in the United States under ' 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) Payment of charges and expenses. All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving

agency.

' 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) Filing of petition. Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the surplus proceeds that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) When and with whom filed. The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under ' 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of the vesting but not later than 90 calendar days from the vesting.

(c) Evidence required. The petition must show the party-s title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by

satisfactory proof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) Payment of claim. If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (see ' 127.36). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in ' 127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) Doubtful claim. Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Finance, for instructions. The decision of the Assistant Commissioner, Office of Finance, with respect to any petition filed under this section will be final and conclusive on all parties.

PART 141 - ENTRY OF MERCHANDISE

1. The general authority citation for part 141 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to revise ' 141.5 to read as follows:

' 141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with ' 4.37 or ' 122.50 or ' 123.10 of this chapter.

PART 142 - ENTRY PROCESS

1. The authority citation for part 142 would continue to read as follows:

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend ' 142.2 by revising paragraph (a) to read as follows:

' 142.2 Time for filing entry.

(a) General rule: After arrival of merchandise. Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel,

aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

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Commissioner of Customs
Raymond W. Kelly

Approved: May 19, 2000

Acting Deputy Assistant Secretary of the Treasury
Dennis M. O'Connell